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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 826

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiffs and Appellees,
vs.
RAYMOND CAINE,
Defendant and Appellant.

Appeal—Criminal

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

STATEMENT AS TO JURISDICTION.

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No.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiffs and Appellees,* vs. RAYMOND CAINÉ, *Defendant and Appellant.*	Appeal— Criminal

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

STATEMENT AS TO JURISDICTION.

The appellant, pursuant to United States Supreme Court rules 13 (2) and 15, files this his statement of the basis on which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment of conviction in question and should exercise such jurisdiction in this case.

1. OPINION BELOW.

No opinions were delivered in the Courts below.

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2. JURISDICTION.

The appeal herein is from a final judgment of conviction made and entered by the Appellate Department of the Superior Court of the State of California in and for the County of San Mateo, the highest Court of the State of California in which decision could be had.

The grounds upon which jurisdiction of the Supreme Court of the United States is invoked are:

That the ordinance described in the complaint as applied to defendant, deprives him of his liberty and property without due process of law in violation of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, and that said ordinance, as applied to defendant, denies to him the equal protection of the laws, in violation of said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This is a criminal action commenced in the Municipal Court of the Southern Judicial District of the County of San Mateo, State of California, in which appellant, Raymond Caine, was charged with the crime of misdemeanor, to wit, an alleged violation of Section 105 of Ordinance No. 758 of the City of Redwood City in that he did operate a truck having a gross weight in excess of 3 tons on a street in the City

of Redwood City which street was not a truck route as designated in said Section 105 of said ordinance. Said Section 105 is set forth verbatim in an appendix hereto.

Defendant when arrested had driven his truck from a quarry situated on the county road of Edgewood Road distant 1.7 miles east of the western city limits of Redwood City. When he reached said city limits, he crossed the city line and entered Redwood City. He was immediately arrested and charged with a violation of said Section 105 of the Ordinance which made it unlawful for his truck to enter the city limits.

After a trial, defendant was convicted and sentenced to pay a fine of $27.00 and in lieu thereof be confined in the San Mateo County Jail for a period of one day for each $5.00 of said fine.

On August 16, 1957 a stipulation as to certain facts was filed in the Municipal Court. This stipulation is in part as follows:

> "That on June 11, 1957 defendant Caine drove a Dodge dump truck license No. 51591 from the Whipple Quarry located on the county road of Edgewood Road in the unincorporated area of San Mateo County 1.7 miles east of the city limits of Redwood City in an easterly direction on Edgewood Road to a point within the city limits of Redwood City at the intersection of Edgewood Road and Alameda de las Pulgas at which point he was arrested by officer Elkington of the Redwood City Police Department."

The defendant was hauling the rock to the corner of Main and Bradford Streets in Redwood City. This

point is marked on the map (Rep.Tr. p. 11, line 7, and Rep.Tr. p. 28, line 21).

The date of the judgment sought to be reviewed is December 31, 1957. Said judgment became final January 8, 1958. The date notice of appeal was filed is January 9, 1958 and the Court in which it is filed is the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

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3. STATUTORY PROVISION CONFERRING JURISDICTION OF THIS APPEAL ON THE SUPREME COURT OF THE UNITED STATES.

Section 1257 (2) title 28 United States Code, the material part of which is as follows:

> Sec. 1257. **State courts, appeal; certiorari.** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

In the instant case there was drawn in question the validity of said ordinance on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity.

4. DECISIONS AUTHORIZING JURISDICTION.

The following decisions are believed to authorize the jurisdiction of the United States Supreme Court in this case:

The Home Insurance Company of New York v. The City Council of the City of Augusta, Georgia (1876), 8 Otto 116; 23 Law Ed. 825;
Eubank v. City of Richmond (1912), 226 U.S. 137.

Both of these cases involved city ordinances alleged to violate the Fourteenth Amendment to the Constitution.

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5. THE STATE STATUTE (ORDINANCE) THE VALIDITY OF WHICH IS INVOLVED.

Such statute is Section 105 of Ordinance No. 758 of the City of Redwood City which section is set out in an appendix to this jurisdictional statement.

A map of Redwood City and the surrounding territory is a part of the record on this appeal. It was introduced in evidence as Defendant's Exhibit No. 1. The city limits of Redwood City are colored pink on this map. The remainder of the map shows unincorporated territory of San Mateo County and also portions of the cities of Woodside and San Carlos.

As it is not practical to make the map a part of this jurisdictional statement appellant incorporates herein a statement as to what is shown by said map so as to explain the Ordinance.

Redwood City lies on both sides of El Camino Real, a state highway which runs from San Francisco to Los Angeles. It runs through Redwood City from north to south. Another state highway, Bay Shore Highway, runs through the easterly portion of Redwood City and parallels El Camino Real. From the Bay Shore state highway another state highway known as Woodside Road runs southerly through Redwood City from Bay Shore Highway to El Camino Real, a distance of about a mile, where it crosses El Camino Real and proceeds in a southerly direction about two miles to the city limits of Woodside and thence through Woodside to the City of Santa Cruz on the Pacific Ocean.

The ordinance prohibits trucks of a gross weight in excess of 3 tons either to enter or to leave the city at any point on its western or its southern border except on Woodside Road, a state highway. The city has no power to reduce the weight of trucks on any state highway (Vehicle Code of California, sec. 713). The ordinance designates no truck route west of El Camino Real. No street from the west which intersects El Camino Real is designated as a truck route.

Not including the state highway of Woodside Road (which runs south from El Camino Real) there are 24 city streets which run west from the state highway of El Camino Real. Five of these streets viz. Edgewood Road, Whipple Avenue, Hopkins Avenue, Brewster Avenue, and Jefferson Street run to the western city limits and there connect with county roads ex-

tending westerly into the unincorporated area of San Mateo County. These are all through roads and are county roads from the city limits west.

The ordinance forbids any truck the gross weight of which exceeds 3 tons to pass through Redwood City from El Camino Real in order to reach any of the county roads which reach the western city limits and also forbids all such trucks to enter the western city limits at the points where the above mentioned county roads reach the western city limits. This prohibition applies to trucks which reach the western city limits at the point where the county road of Edgewood Road reaches said city limits. This prohibition applies also to trucks traveling from the east which seek to enter the county road of Edgewood Road at the city limits.

The ordinance, therefore, forbids trucks of over 3 tons gross weight either to enter or to leave the city at any point where county roads from the west reach the city limits.

The quarry from which defendant was hauling his rock is on the county road of Edgewood Road 1.7 miles west of the city limits. This county road extends in a general westerly and northwesterly direction from Redwood City on San Francisco Bay to Half Moon Bay on the Pacific Ocean. That portion of the County Road of Edgewood Road from Redwood City to Canada Road has been in existence for over 100 years. Canada Road parallels the state highway of El Camino Real.

6. QUESTIONS PRESENTED ON APPEAL.

1. Does the ordinance here involved under which defendant was convicted deny to him the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment?

Defendant is denied the right to enter the city limits of Redwood City at the point where the county road of Edgewood Road reaches the city limits, or to use any city street connecting with the county road of Edgewood Road; but trucks of other persons not entering the city at that point are permitted by the ordinance to use the city streets connecting with the county road of Edgewood Road. Defendant when traveling from Redwood City to the quarry, which is 1.7 miles west of Redwood City, is denied the right to use any city street to reach the county road of Edgewood Road; but trucks of other persons are permitted to use such city streets if they do not leave the city at the point where the county road of Edgewood Road reaches the western city limits. All such trucks have the same effect upon the streets of Redwood City and upon the inhabitants of the city and there is no valid reason for such discrimination.

2. Does the ordinance as applied to defendant deprive him of his liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment?

Defendant maintains that the ordinance as applied to him is arbitrary, unreasonable and capricious, for the following reasons:

(a) It specifies no alternate route which defendant might use.

(b) It was argued that defendant could travel west instead of east from the quarry to Canada Road; thence to the city of Woodside and from Woodside via the State Highway of Woodside Road to the State Highway of El Camino Real and thence to the point where the State Highway is intersected by the city street of Edgewood Road a distance of 11.45 miles, as against a distance of 2.7 miles through Redwood City via the city street of Edgewood Road.

(c) The route via Woodside crosses a hill, the elevation of which is 549 feet above sea level. The road over the hill is curved and has a maximum grade of 7.15 per cent. The elevation of the quarry is 239 feet above sea level and the elevation of the point where the city street of Edgewood Road intersects the State Highway of El Camino Real is 17 feet above sea level.

(d) The cost of hauling rock via the Woodside route is $1.00 per ton, whereas the cost of hauling through the City of Redwood City is 35 cents per ton.

(e) The route via Woodside lies mainly outside of the city limits of Redwood City and passes through another city, viz. Woodside. The burdens and hazards of traffic which normally passes through 1.10 miles of a city street of Redwood City are thrown upon many miles of county roads, city streets of the City of Woodside and the state highways of Woodside Road and El Camino Real. Defendant, if he traveled over

such route, would be subject to such greatly increased hazards.

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7. STATEMENT OF THE CASE.

The appellant was convicted of the crime of misdemeanor, to wit, a violation of Section 105 of said Ordinance No. 758 and was sentenced to pay a fine of $27.00 (including a $2.00 state assessment) and in lieu thereof be confined in the San Mateo County Jail for a period of one day for each $5.00 of said fine.

Appellant demurred to the complaint in the Municipal Court on the following grounds viz:

(a) That the ordinance pleaded in the complaint is void as to the defendant because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denies to the defendant the equal protection of the laws as set forth in the Points and Authorities annexed to the demurrer and made a part thereof.

(b) That the ordinance pleaded in the complaint is, as to defendant, void because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives defendant of his liberty and property without due process of law, as set forth in the Points and Authorities hereunto annexed and made a part of this demurrer.

The Points and Authorities attached to said demurrer are in part as follows:

(a) Denial of equal protection of the laws.

It will be seen from an inspection of the ordinance that defendant is unlawfully discriminated against in the following particulars, viz:

(1) Defendant traveling on the county road of Edgewood Road is forbidden to cross the city line in order to reach a construction job in the city, but trucks of other persons whose place of business is on any street in Redwood City can operate their trucks on the city street of Edgewood Road or on any other street west of the state highway of El Camino Real to reach a construction job in the city.

(2) A person hauling from a point on the city street of Edgewood Road immediately inside the city line can use the city street of Edgewood Road to reach the state highway or any other point in Redwood City, but because defendant is hauling from a point situated outside of the city, he is denied the use of Edgewood Road or any other city street connecting with the county road of Edgewood Road.

Defendant who was lawfully traveling on the county road of Edgewood Road to the city limits of Redwood City is forbidden to pass through the city to the state highway and is also forbidden to enter the city for the purpose of delivering merchandise to a point in the city, but trucks of other persons who wish to transport goods from any point in the city to the point where Edgewood Road reaches the city limits are permitted to use Edgewood Road to that point or to any other point on Edgewood Road, or to any other point in the city.'

If after delivering his load in the city limits defendant wished to return to the quarry, he is denied the use of the city street of Edgewood Road, or any other city street, to reach the county road of Edgewood Road, whereas trucks of other persons who do not wish to pass beyond the city limits are permitted to use the entire length of the city street of Edgewood Road.

The discrimination above described is shown by Subdivisions (C) and (D) of Section 105 of the ordinance, which are as follows:

(C) *Truck Traffic in the City: Outside Origin:*

1. *Outside Destination.* All trucks entering the City for a destination point outside the City shall operate only over a truck route as hereinbefore established.

2. *One Inside Destination Point.* All trucks entering the City for a destination point in the City shall enter the City only on an established truck route and shall proceed only over an established truck route and shall deviate only at the intersection with the street nearest to the destination point. Upon leaving the destination point the deviating truck shall return to the nearest truck route by the shortest route.

3. *Multiple Inside Destination Points.* All trucks entering the City for multiple destination points shall enter the City only on established truck routes, shall proceed only over established truck routes and shall deviate only at the intersection with the street nearest to the first destination point. Upon leaving the first destination point a deviating truck shall proceed to all other

destination points by the shortest route. Upon leaving the last destination point the deviating truck shall return to the nearest truck route by the shortest route.

(D) *Truck Traffic in the City: Inside Origin:*

1. *Outside Destination Point.* All trucks on a trip originating in the City and traveling in the City for a destination point outside the City shall proceedeby the shortest route to the nearest truck route as herein established.

2. *Inside Destination Points.* All trucks on a trip originating in the City and traveling in the City for destination points in the City shall proceed to such destination points by the shortest route.

The ordinance clearly discriminates against trucks engaged in through traffic or entering Redwood City from the outside.

It is obvious that there is no valid basis for such discrimination. The truck of defendant and the trucks of such other persons have the same effect upon the streets of Redwood City and the inhabitants of that City.

The Supreme Court of Ohio in *Richter Concrete Corporation v. City of Reading* (1956), 136 N.E. 2d 422, *held discriminatory and unconstitutional* an ordinance of Reading *similar in all respects to the Redwood City ordinance here involved.*

In the above cited case the material part of the Reading ordinance was as follows:

"Section 1: That it shall be unlawful for any person, partnership, firm or corporation to operate any vehicle or vehicles within the boundaries of the City of Reading, Ohio, containing a gross weight, including load, in excess of 20,000 pounds, *excepting for the purpose of loading or unloading said vehicles at a residence, place of business or industry within the boundaries of the City of Reading, Ohio,* which shall include ordinary deliveries to any of such places, and *excepting also for the purpose of traveling to or from a residence, place of business or industry where said vehicle or vehicles are registered or hired and excepting also for the operation of vehicles over Reading Road, a state highway.*

"Provided further, that the gross weight, including load of any vehicle or vehicles, shall include the gross weight of any trailer or trailers attached to any vehicle or vehicles, together with load."

The Ohio Supreme Court in its opinion (p. 424 of 136 N.E.) said:

"Adding these exceptions together, it is found that the restricting provision is made to apply to all instances *excepting to vehicular travel having one or the other terminus within the territorial limits of the City of Reading,* excepting travel on Reading Road, a state highway. *In other words, all through travel excepting on Reading Road, is penalized if the vehicle weighs more than 20,000 pounds, whereas transportation having its beginning or ending, or both within the City of Reading is left free regardless of the weight of the vehicle. In other words, the ordinance, with its*

restrictions and penalty, is made to apply solely to through traffic."

The Court at page 425 further said:

"The objection to this ordinance is that it imposes restrictions or penalties on those using the streets engaged in through traffic, and imposes no such regulation upon those using the streets for other than through traffic, notwithstanding such traffic imposes the same stress upon the streets and creates the same hazards. It is, therefore, assailed as a purely arbitrary classification.

We have been furnished no basis for this distinction between through traffic and other traffic —and can think of none.

That the mere fact of traffic having its termini outside of the municipality is not a valid basis of classification is clear."

In *McLeaish v. Binford* (1931), 52 Fed. (2d) 151, a three-judge Federal Court, convened pursuant to the Act of Congress, said:

"Wide as the power of the Legislature is, we have no manner of doubt that, if it *arbitrarily interferes* with the right of one of the public to haul his goods over it, whether the hauling is done for himself or for hire for others, *that one may be, as he has uniformly been, accorded relief in the national courts."*

In the case last cited, the Court had under consideration a Texas statute limiting the weight of loads. The statute there held unconstitutional limited the weight of loads and *also the number of packages per*

load. It was this latter portion of the statute (which the Court held to be discriminatory), which entitled the plaintiff to an injunction against the enforcement of the statute. The Court held that there was no reasonable basis for discrimination between a load containing a specified number of packages and a load containing a greater number.

This decision was affirmed by the Supreme Court in *T. Binford v. McLeaish* (1932), 284 U.S. 598.

(b) The ordinance as applied to defendant is arbitrary, unreasonable and capricious and violates the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

As to defendant due process of law is denied for the following reasons:

1. The ordinance does not specify an alternate route through the city over which defendant could operate his truck, and is for that reason arbitrary and capricious.

The Courts of this country have uniformly held that a city cannot close a street to through traffic unless it designates an alternate route *through the city.*

Associated Transport v. City of Syracuse, 196 Misc. 1091, 93 N.Y.S. (2d) 423 (Appeal dismissed 1951) 107 N.Y.S. (2d) 565;

Garneau v. Eggers (1934), 133 N.J.L. 247, 174 Atl. 250;

Western Auto Transports v. City of Cheyenne (1942), 57 Wyo. 351, 120 Pac.(2d) 598;

Blumenthal v. City of Cheyenne (1947), 64 Wyo. 75, 186 Pac.(2d) 556, 561; also at page 590;

City of Arlington v. Lillard (1927), 116 Texas 446, 294 S.W. 829;

Commonwealth v. Kennedy (1937), 129 Pa. Super. 149, 195 Atl. 770; see also pages 773-774.

In the last cited case the Court said:

> *"where other reasonably convenient routes in the city are available* to the traffic thus excluded in the interest of the public safety and welfare the latter has no just cause for complaint."

See also Opinion of the Attorney General of New York referred to in the Opinion in *Associated Transport v. City of Syracuse, supra.* In his Opinion the Attorney General said:

> "that under Section 90 of the Vehicle and Traffic law a municipality might lawfully designate highways from which heavy trucks should be excluded *but in such case the village had the duty to provide an alternate route which was adequate, safe and suitable* for otherwise it would be within the power of the village to bar such traffic entirely."

Additional grounds showing that the ordinance as applied to appellant is arbitrary, unreasonable and capricious, were shown at the trial where the following stipulations were made by counsel for the respective parties:

Mr. Costello. Your Honor, we will stipulate at this time to the following facts, reserving our objection to their admissibility. The map presently on file in the clerk's office of this Court sets forth the situation.

The city limits are shown by the part which is colored pink. The location of the quarry mentioned in the stipulation is marked with a red X on the map.

Mr. Harwood. On this map it is marked with a black X.

The Court. And I believe initialed A.J.H. No. 2.

Mr. Costello. That is correct Your Honor. Between said quarry and Canada Road, the county road, Edgewood Road crosses a hill, the elevation of which at the summit is 549 feet above sea level. The said road over said hill is curved and has a maximum grade of 7.15 per cent. The elevation of the quarry is 239 feet above sea level and the elevation of the point where city street of Edgewood Road intersects State Highway El Camino is 17 feet above sea level. It is substantially down grade from said quarry to said highway. The Town of Woodside is incorporated and the northern boundary thereof is shown by a black line initialed A.J.H. No. 1 on the above mentioned map presently on file in the Court, which said city limits line of Woodside crosses Canada Road. Woodside Road as shown upon the map is a state highway running westerly (should be southerly) from the above-mentioned state highway of El Camino to the westerly (should be southerly) limits of Redwood City and from thence westerly (should be southerly) through the unincorporated area of the County of San Mateo and through the town of Woodside. Said Woodside Road is a permissible truck route. I would like to include this addition: Said Woodside Road runs in an east-west (should be south-north) direction and is open to trucks of any weight. From the quarry

entrance mentioned in the stipulation on file running easterly on Edgewood Road to the city limits of Redwood City is a distance of 1.6 miles and from there to El Camino is 1.35 miles. From the above mentioned quarry proceeding westerly on Edgewood to its intersection with Canada Road is 1.5 miles. From the intersection of Canada and Edgewood proceeding southerly on Canada Road to its intersection with Woodside Road is 3.6 miles. From the intersection of Canada Road and Woodside Road proceeding easterly to its intersection with El Camino Real a distance of four miles. (The word "easterly" in last sentence should be "northerly" as is shown by map.) From the intersection of Woodside Road and El Camino Real traveling northerly on El Camino to the intersection of Edgewood Road and El Camino is 1.35 miles. It is 2.7 miles from the above mentioned quarry by the most direct route as against 8.9 miles the other way; the difference is 6.25 miles. (Due to an error in addition Mr. Costello stated that the distance is 8.9 miles the other way and that the difference is 6.25 miles. These figures should be 10.45 miles, the difference being 7.75 miles.) (Rep.Tr. pp. 19-21.)

That the cost of hauling rock from said quarry to said construction job, if hauled through the city street of Edgewood Road from the point where the county road of Edgewood Road reaches the western city limits, is 35 cents per ton, whereas the cost is $1.00 per ton if hauled via the City of Woodside.

The alleged "alternate" route is mainly outside the city limits of Redwood City through many miles of

unincorporated territory and also through another city viz. the City of Woodside. The ordinance throws the burden of traffic which normally passes through 1.10 miles of a Redwood City street upon many miles of county roads lying outside of the city limits and upon about two miles of a city street of Woodside and upon the state highways of Woodside Road and the state highway of El Camino Real. Instead of 1.10 miles of one city street being subject to wear and tear such wear and tear is spread over many miles of roads and streets outside of Redwood City. The hazards of traffic are increased more than threefold. Not only are such hazards increased by the greater length of the road and the greater amount of time the trucks are operating on the road via Woodside but such hazards are also increased by a curved road over a high hill.

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8. STAGE OF PROCEEDINGS AT WHICH FEDERAL QUESTIONS RAISED.

The stage of the proceedings in the Municipal Court (the Court of first instance) at which the questions sought to be reviewed were raised are as follows: Said questions were first raised by defendant's demurrer to the complaint and were also raised by the notice of appeal to the Appellate Department of the Superior Court; that the method of raising said questions and the way on which they were passed upon are as follows:

Defendant demurred to the complaint on the following grounds, viz:

(a) That the ordinance pleaded in the complaint is void as to defendant because it violates Section 1 of the Fourteenth Amendment to the Constitution in that it denies to defendant the equal protection of the laws.

(b) That the ordinance pleaded in the complaint is void as to defendant because it violates Section 1 of the Fourteenth Amendment in that it deprives defendant of his liberty and property without due process of law as set forth in the Points and Authorities annexed to and made a part of the demurrer.

The Municipal Court overruled defendant's demurrer and found the defendant guilty of the crime charged in the complaint and the Appellate Department of the Superior Court affirmed the judgment of the Municipal Court.

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9. FEDERAL QUESTIONS ARE SUBSTANTIAL.

It is submitted that the federal questions here involved are obviously substantial, as they involve the denial to appellant of the equal protection of the laws and the deprivation of his liberty and property without due process of law.

In *Pierre v. Louisiana,* 306 U.S. 354, 358, the Supreme Court said:

> "Equal protection to all is the basic principle on which justice under the law rests."

In *Zucht v. King,* 260 U.S. 174, 176, referred to in Rule 15 the appellant contended that her rights under

the Fourteenth Amendment were violated by the manner of the enforcement of an ordinance requiring school children to be vaccinated. The ordinance conferred broad discretion on the health authorities as to when and how the ordinance should be enforced. The Supreme Court called attention to the fact that in numerous prior decisions of the Court the validity of such legislation had been decided and that no showing was made by appellant that her case was not governed by such prior decisions.

In *Zucht v. King, supra,* this Court said:

> "The charge is of an unconstitutional exercise of authority under an ordinance *which is valid.*" (Emphasis added.)

The Supreme Court held that in such a case certiorari and not appeal was the proper method of review.

In the instant case the ordinance as applied to appellant is *invalid.*

In *Zucht v. King, supra,* the case did not come under subdivision (2) of Section 1257 for in *Zucht v. King* no question as to the validity of the ordinance was involved it being merely alleged that the method of its enforcement violated the Constitution, in which case certiorari and not appeal is the proper method of review.

This Court has in effect held in *T. Binford v. McLeaish* (1932), 284 U.S. 598 (affirming *McLeaish v. Binford* (1931), 52 Fed. 2d 151) that appellant herein

has been, by the ordinance here involved, denied the equal protection of the laws.

As to due process of law, it is obvious that the ordinance as applied to appellant is unreasonable, arbitrary and capricious.

When an ordinance is claimed to be unreasonable the rule of law to be applied in determining the question of reasonableness is whether or not there is a debatable question as to the reasonableness of the ordinance.

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10. COPY OF JUDGMENT APPEALED FROM.

Appellate Department of the Superior Court in and for the County of San Mateo, State of California.

No. AD-61. The People vs. Raymond Caine

On the appeal from judgment of the Municipal Court, Southern Judicial District, submitted in the above entitled action, the Court has this day rendered the following decision: judgment affirmed. It is ordered that the remittitur not be sent to the Municipal Court until 10 days after this affirmance is entered.

A. R. Cotton, P.J.
Edmund Scott, J.
Louis B. Dematteis, J.

(Dated Dec. 31, 1957.)

Said judgment became final on January 8, 1958. Under Rule 7 Revised Appellate Department Rules adopted pursuant to statute by the Judicial Council of the State of California a Judgment of the Appellate Department becomes final upon the expiration of 7 days after the same has been pronounced.

Dated, February 24, 1958.

Respectfully submitted,

A. NOBLE MCCARTNEY,

Attorney for Appellant.

GEORGE H. ECKHARDT, JR.,

ALFRED J. HARWOOD,

Of Counsel.

(Appendix Follows.)

Appendix

ORDINANCE NO. 781

AMENDING TRAFFIC ORDINANCE TO PROVIDE FOR TRUCK ROUTES AND WEIGHT LIMITS ON CERTAIN STREETS IN THE CITY OF REDWOOD CITY.

The Council of Redwood City do Ordain as Follows:

Section 1. Ordinance No. 758, passed and adopted by the Council of Redwood City on February 1, 1954, being the Traffic Ordinance of the City of Redwood City, is hereby amended by adding thereto a new section numbered 105, as follows:

Sec. 105. *Truck routes:* (A) The following streets are hereby declared to be truck traffic routes for the movement of vehicles exceeding a maximum gross weight of three (3) tons hereinafter called "trucks," and the City Manager is hereby authorized and directed to designate such streets by appropriate signs as "Truck Route." Said streets are specifically designated as follows:

1. All of El Camino Real within the corporate limits of Redwood City.

2. All of Bayshore Highway within the corporate limits of Redwood City.

3. All of Main Street within the corporate limits of Redwood City.

4. All of Stafford Street within the corporate limits of Redwood City.

5. All of Industrial Way within the corporate limits of Redwood City.

6. All of Woodside Road within the corporate limits of Redwood City.

7. All of Spruce Street within the corporate limits of Redwood City.

8. All of Harbor Boulevard within the corporate limits of Redwood City.

9. All of Jefferson Avenue between El Camino Real and Pennsylvania Avenue.

10. All of Maple Street between El Camino Real and Main Street.

11. All of Chestnut Street between Main Street and Bayshore Highway.

12. All of Middlefield Road southerly of Main Street.

13. All of Spring Street between Chestnut Street and Douglas Avenue.

14. All of Bay Road from Chestnut Street to Second Avenue.

15. All of Broadway from Chestnut Street to Fifth Avenue.

16. All of Charter Street from Spring Street to Bayshore Highway.

17. All of Fifth Avenue between Broadway and Bayshore Highway.

18. All of Second Avenue from Bay Road to Broadway.

19. All of Douglas Avenue between Bay Road and Broadway and all of Douglas Avenue northerly from Broadway.

(B) No person, firm or corporation shall operate any truck having a gross weight in excess of three (3) tons on any street in the City of Redwood City except on those streets specified in Section 105 (A) hereof and subject to the exceptions hereinafter provided. For the purposes of this ordinance the word "Truck" shall include the words "truck and trailer" or any combination thereof as defined in Section 152 hereof and any commercial vehicle as defined in the Vehicle Code of the State of California.

(C) *Truck Traffic in the City: Outside Origin:*

1. *Outside Destination.* All trucks entering the City for a destination point outside the City shall operate only over a truck route as hereinbefore established.

2. *One Inside Destination Point.* All trucks entering the City for a destination point in the City shall enter the City only on an established truck route and shall proceed only over an established truck route and shall deviate only at the intersection with the street nearest to the destination point. Upon leaving the destination point the deviating truck shall return to the nearest truck route by the shortest route.

3. *Multiple Inside Destination Points.* All trucks entering the City for multiple destination points shall enter the City only on established truck routes, shall proceed only over established truck routes and shall deviate only at the intersection with the street nearest to the first destination point. Upon leaving the first destination point a deviating truck shall proceed to all other destination points by the shortest route. Upon leaving the last destination point the deviating

truck shall return to the nearest truck route by the shortest route.

(D) *Truck Traffic in the City; Inside Origin:*

1. *Outside Destination Point.* All trucks on a trip originating in the City and traveling in the City for a destination point outside the City shall proceed by the shortest route to the nearest truck route as herein established.

2. *Inside Destination Points.* All trucks on a trip originating in the City and traveling in the City for destination points in the City shall proceed to such destination points by the shortest route.

(E) Any police officer shall have the authority to require any person driving or in control of any truck on any public street or highway in the City of Redwood City to proceed to any public or private scale available for the purpose of weighing and determining whether this section has been complied with.

(F) Nothing in this section shall be construed as applying to any truck coming from an unrestricted street having ingress and egress by direct route to and from streets on which truck traffic is restricted as herein provided when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on streets other than truck routes or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon a street other than a truck route for which a building permit has

previously been obtained, or to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility, or to any vehicle which is subject to the provisions of Section 50 and ¼ of the Public Utilities Act, or to any vehicle owned or operated by the City of Redwood City while engaged in the repair, maintenance or construction of streets, street improvements or street utilities.

Section 2. This ordinance shall cease to be effective as to any State highways within six (6) months after the receipt of notice from the Department of Public Works of the State of California of its withdrawal of its consent to the establishment of any restrictions affecting State highways herein.

Section 3. If any section, sentence, clause or phrase of this ordinance is for any reason held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance and the Council of the City of Redwood City hereby declares that it would have passed this ordinance and each section, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared invalid.

Section 4. This ordinance shall be effective thirty (30) days after its adoption.

Passed and adopted by the Council of the City of Redwood City at a regular meeting thereof held on the 15th day of November, 1954.

Ordinance #781

SUPREME COURT U.S.
FILED
APR 16 1938
CHARLES E. ELMORE, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 826

RAYMOND CAINE, *Appellant,* vs. THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellees.*	Appeal—Criminal

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS.

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In the Supreme Court
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OCTOBER TERM, 1957

No. 826

RAYMOND CAINE, *Appellant,* vs. THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellees.*	Appeal—Criminal

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS.

Appellees state that the motion to dismiss is made on the ground that the appeal "does not present a substantial federal question".

It is respectfully submitted that the appeal herein *does present two most substantial federal questions, viz.:*

(1) *Does the ordinance as applied to appellant deny to him the equal protection of the laws?*

(2) *Does the ordinance deprive appellant of his liberty and property without due process of law?*

Appellees say "the principles governing this action have been clearly established by the federal courts in numerous previous decisions".

Neither the Supreme Court nor the Circuit Courts of Appeals have passed upon the questions here involved; but these Courts have in many cases clearly established the *principles* governing both such questions. These decisions are cited and quoted from in appellant's statement as to jurisdiction.

The Supreme Court has not decided a case involving a statute or ordinance which discriminated against truck operators desiring to enter a city from the outside and in favor of other truck operators, nor has said Court held, on facts in any way similar to those here presented, that an ordinance or statute is arbitrary, unreasonable and capricious. No such facts as are here involved have ever been presented to the Supreme Court. Many state Courts have held that an ordinance closing the city's border to traffic seeking to pass through the city or to enter the city must designate an alternate route in the city for such traffic.

Appellees cite the case of *Zucht v. King* (1922), 260 U.S. 174 referred to in Rule 15 of this Court. In that case one of the reasons assigned by the Supreme Court for its ruling was that the Supreme Court had passed upon the identical question there involved, that question being the power of the state to provide for the compulsory vaccination of school children. In dismissing the writ of error the Supreme Court said:

> "Long before this suit was instituted, Jacobson v. Massachusetts 196 U.S. 11 had settled that it was within the police power of a state to provide for compulsory vaccination. * * * In view of these decisions we find in the record no question as to the validity of the ordinance sufficiently substantial to support the writ of error."

Appellees make the following statement in their brief:

> "The questions presented by this appeal are extremely narrow. Any decision adverse to the constitutionality of the application of Section 105 to appellant under the facts in this case would be so narrow that it would not constitute a precedent of any value in determining the validity of this or similar litigation."

In this case two most important questions of law under Section 1 of the Fourteenth Amendment are directly involved.

Defendant is by the ordinance denied the equal protection of the laws and is deprived of his liberty and property without due process of law. Appellant pursuant to Section 1257 (2) 28 U.S. Code, has appealed to this Court from a decision of a state Court which is in favor of the validity of an ordinance which deprives appellant of the rights guaranteed him by the United States Constitution. The Supreme Court has not in any prior decision determined appellant's rights as it did determine the rights of the appellant in *Zucht v. King*, 260 U.S. 174, supra.

Appellant is entitled to have his rights guaranteed by the Fourteenth Amendment determined on this appeal.

Whether a decision in this case would be a "precedent in determining the validity of this or any similar litigation" is utterly beside the question. The statement of appellees quoted above is obviously wholly irrevelant, and we do not believe that any such contention has ever before been made in reply to a Statement as to Jurisdiction.

The matters here involved are of widespread public importance and the decision of this Court herein will no doubt determine all questions concerning the rights here asserted.

Appellant will nex reply to what is said in the Motion to Dismiss with reference to the two questions of constitutional law here involved.

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1. DENIAL OF EQUAL PROTECTION OF THE LAWS.

This question is discussed at pages 11 to 16 of the Statement as to Jurisdiction.

Appellant was hauling from a quarry on the county road of Edgewood Road 1.6 miles west of the western city limits of Redwood City to a point within the city limits.

Under the ordinance here involved appellant was forbidden to enter the city at the point where the county road of Edgewood Road reaches the western city limits and there connects with the city street of

Edgewood Road and the city street of Alameda de las Pulgas but trucks of other persons are permitted by the ordinance to use the streets of Edgewood Road and Alameda de las Pulgas right up to the point where the county road of Edgewood Road reaches the city limits.

After delivering his rock at a point in Redwood City appellant is forbidden by the ordinance to return to the quarry by way of Edgewood Road or any other city street connecting with the county road of Edgewood Road, but trucks of other persons who do not wish to pass over the western city line are permitted to use the city street of Edgewood Road and other city streets right up to the point where the county road of Edgewood Road reaches the western city limits.

A person who hauls from a point in Redwood City directly opposite the point where the county road of Edgewood Road reaches the city limits is permitted by the ordinance to operate his truck over the city street of Edgewood Road or any other street of Redwood City, but appellant is denied the right to use any city street which connects with the county road of Edgewood Road.

The provisions of the ordinance hereinabove referred to are Subdivisions 1 and 2 of Division "C" of Section 105 of the ordinance and Subdivisions 1 and 2 of Division "D" of Section 105 of the ordinance. Section 105 of the ordinance is set out at page iii of the Appendix to the Jurisdictional Statement.

Obviously this is a clear case of unlawful discrimination. All of these trucks have the same effect upon the streets of Redwood City and on the residents of the city.

Appellees cite and quote from the decision of the District Court of Appeal of the State of California in *Whyte v. City of Sacramento* (1924), 65 Cal. App. 534. *In the case cited there was absolutely no discrimination against anyone.* At page 550 the Court said:

> "the ordinance applies to all persons in the City of Sacramento engaged in using vehicles of capacity in excess of one ton in weight and exclusively used in the carrying of merchandise or articles of freight. *Thus it is readily to be noted that the ordinance does not discriminate against any particular person. All of the class engaged in the business mentioned within the limits of the City of Sacramento are subject to the terms of the Ordinance. In other words, the ordinance imposes no greater burdens upon one of the class mentioned than are laid on others of the same class or engaged in the same calling under the same conditions.*" (Emphasis added.)

McCammon v. City of Redwood City, 149 Cal. App. 421, is also cited by appellees on the question of discrimination. That case involved the same ordinance which is involved on this appeal. *The District Court of Appeal in that case obviously erred in overruling the objection that the ordinance discriminated against the appellant and in favor of other persons in the same manner as the appellant herein is discriminated against.*

In the case last cited the plaintiffs petitioned the Supreme Court of the State of California for a hearing in that Court after decision in the District Court of Appeal. Two of the justices of the Supreme Court were of the opinion that the petition should be granted. (Page 427.)

There is nothing in the refusal by the Supreme Court to hear the case of ***McCammon v. City of Redwood City,*** supra, after decision by the District Court of Appeal which in any way constitutes an approval of that decision by the Supreme Court, and it follows that the decision in the ***McCammon*** case does not determine that such decision is the law of California. Such was the holding of the Supreme Court of California in *People v. Davis* (1905), 147 Cal. 346, where the Supreme Court at page 350 said:

> "It is proper to add that the denial in any case of an application for the transfer of a case decided by a district court of appeal is not to be taken as an expression of any opinion by this court, or the equivalent thereof, in regard to any matter of law laid down in such opinion."

As to the objection of unlawful discrimination the District Court of Appeal at page 426 cited *Whyte v. City of Sacramento,* supra, quoted from above *where there was no discrimination and absolutely no attempt at discrimination.* With reference to the *Whyte* case the District Court of Appeal in *McCammon v. City of Redwood City,* supra, at page 493 said:

> "The decision points out that such an ordinance representing the exercise of the police power must

> be reasonably applied and cannot be invoked so as 'to discriminate in favor of or against particular classes of persons as to whom no reasonable basis for discrimination can be said to exist (page 545).' The Court concluded that there was no unlawful discrimination in such an ordinance".

It is obvious that the writer of the opinion in *McCammon v. City of Redwood City*, supra, could not have read the terms of the ordinance involved in *Whyte v. City of Sacramento*, supra.

The ordinance involved in the *Whyte* case placed no restrictions on vehicles entering or departing from the city as does the ordinance here involved. In fact the Sacramento ordinance did not cover the whole city but only that part thereof which was called the "old city".

In the Motion to Dismiss it is said that Section 713 of the Vehicle Code of California expressly granted the city authority to enact Section 105 of the ordinance here involved.

This is an entirely erroneous statement. The section provides:

> "Any incorporated city or city and county may by ordinance prohibit the use of a street to be described in said ordinance by any commercial vehicle or by any vehicle containing a gross weight limit to be specified in the ordinance."

It is obvious that there is no grant to a city to enact an ordinance which discriminates against certain vehicles and in favor of other vehicles of the same class; nor is there any express grant to any city to

enact an ordinance which is arbitrary, unreasonable or capricious.

Appellees say that "appellant has failed to produce any evidence overcoming the presumption in favor of reasonableness, validity and constitutionality of the ordinance".

As to *discrimination* the ordinance on its face, as applied to appellant, violates the provision of the Fourteenth Amendment that no person shall be denied the equal protection of the laws.

The ordinance on its face also shows that it is unreasonable, arbitrary and capricious and in violation of the due process provision of the Fourteenth Amendment, *for the reason that no alternate route is provided through the city over which appellant might operate his truck.* It is also unreasonable, arbitrary and capricious as shown by the facts set out at pages 17 to 20 of the Statement as to Jurisdiction.

In the Motion to Dismiss at page 15 the following statement is made:

> "The exceptions contained in subdivisions (C) and (D) are designed to permit limited use of prohibited streets where such use is essential to the economic life and general public welfare of the community and the surrounding area.
>
> Without such exceptions the basic regulations would fail as arbitrary. The exceptions, read together, are admirably designed and applied to accomplish the purpose of the legislation by eliminating nonessential truck traffic from lightly constructed narrow residential streets and rout-

ing as much of such traffic as is reasonably possible over wider, safer, and more adequately designed and constructed streets."

In other words, the contention is that the use by trucks hauling to and from points on all of the streets lying west of the state highway of El Camino Real is *essential,* but that the use of these streets by trucks hauling from outside the city or by trucks leaving the city at its western border is *nonessential.*

It is obvious that the right to enter the city from outside the city in order to make deliveries in the city is just as essential to the "economic life" of Redwood City as such use by trucks whose trips start inside the city limits of Redwood City.

In enacting the ordinance the city cannot discriminate against trucks of the same weight which use its streets, and it cannot lawfully enact an ordinance denying the right to enter the city limits unless an alternate route is provided for, and unless the ordinance is reasonable, not arbitrary and not capricious.

The "exceptions" appellees say "refer only to local hauls"; but the haul in which appellant was operating his truck was also a local haul *as soon as his truck entered the city limits.* Clearly there was discrimination when trucks of the same weight were permitted to use the city street of Edgewood Road and other streets from the western city limits which connect with the county road of Edgewood Road. The contention is really this: "Trucks reaching the city on the county road of Edgewood Road are not essential to the eco-

nomic life of the city whereas trucks operating from points in the city or from the state highway of El Camino Real are essential".

Referring to the case of *Richter Concrete Company v. City of Reading* (1956) 136 N.E. 2d 422, cited in the Statement as to Jurisdiction, appellees contend that the case is not authority here.

The material part of the ordinance in the above case reads as follows:

> "Sec. 1. That it shall be unlawful for any person, partnership, firm or corporation to operate any vehicle or vehicles on any of the public streets on the City of Reading, Ohio, containing a gross weight including load in excess of 20,000 lbs. *excepting* for the purpose of loading or unloading said vehicles at a residence, place of business, or industry within the boundaries of the City of Reading, Ohio, which shall include ordinary deliveries to any of such places, and *excepting also* for the purpose of traveling to or from a residence, place of business, or industry where said vehicles are registered or hired and excepting also for the operation of vehicles over Reading Road, a state highway."

It will be seen that the Reading ordinance was *less discriminatory* than the Redwood City ordinance. If Redwood City had such an ordinance appellant would not have violated it for he was making a delivery within the boundaries of the city. The Reading ordinance prohibited through traffic but did not forbid trucks to enter the city when they intended to deliver their loads to a point in the city. *The Reading ordi-*

nance was aimed at through traffic; but whether the traffic was through or traffic destined to a point in the city is wholly immaterial as far as unlawful discrimination is concerned.

Under the Redwood City ordinance, as has been pointed out in the Statement as to Jurisdiction, other trucks which did not enter the city at the point where appellant entered it are permitted to use all of the streets west of El Camino Real, a right which was denied to appellant.

The Redwood City ordinance and the Reading ordinance are not identical *but the rule of law that there can be no unlawful discrimination applies equally in both cases.*

At page 17 of the Motion to Dismiss the following statement is made:

> "The ordinance complained of here applies to all persons in the City of Redwood City engaged in using city streets with trucks of a gross weight in excess of 3 tons. The ordinance does not discriminate against any particular person. All of the class engaged in the described activity within the limits of the city are subject to the terms of the ordinance."

In view of the fact that persons operating trucks of a weight in excess of 3 tons may lawfully operate them on the city street of Edgewood Road and other streets *right up to the western city limits,* a right which the ordinance denies to appellant, *it is obvious that the statement quoted above is not true.*

In support of the above quotation appellees cite *Powell v. Commercial,* 127 U.S. 678, 32 L.Ed. 253, 8 Supreme Court 992. In that case the Supreme Court held that a statute of Pennsylvania forbidding the manufacture and sale of oleomargarine was constitutional. The statute discriminated against no one. In holding that the statute did not violate the equal protection of the laws provision of the Fourteenth Amendment, the Supreme Court said:

> "The objection that the statute is repugnant to the clause of the Fourteenth Amendment forbidding the denial by the state to any person within its jurisdiction of the equal protection of the laws is untenable. The state places under the same restriction and subject to like penalties and burdens all who manufacture or sell, keep in possession to sell, the articles embraced by its prohibition, thus recognizing and preserving the principle of equality among those engaged in the same business."

The Motion to Dismiss at page 18 also quotes from *Whyte v. City of Sacramento* (1924) 65 Cal. App. 534, supra, where the Court at page 550 said:

> "The classification made by the ordinance to wit, upon the basis of the weight of the vehicle, the load it carries, and the injurious effect thereof upon the streets involves a real and substantial distinction."

Appellant is not objecting to the Redwood City ordinance upon any such ground but upon the ground that it unlawfully discriminates against appellant and

in favor of other persons. What is said by the Court in *Whyte v. City of Sacramento,* supra, is wholly irrelevant here.

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2. THE ORDINANCE AS APPLIED TO DEFENDANT IS ARBITRARY, UNREASONABLE AND CAPRICIOUS AND VIOLATES THE DUE PROCESS CLAUSE OF SECTION 1 OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The contention made in the Motion to Dismiss that the ordinance is not arbitrary, capricious or unreasonable, is obviously unsound.

This matter is discussed and the authorities are cited at pages 16 et seq. of the Statement as to Jurisdiction.

The cases there cited are to the effect that where a city closes a street connecting with a county road the city must designate an alternate route through the city. Seven cases are there cited. Only one of these cases viz. *Associated Transport v. City of Syracuse,* 196 Misc. 1091, 93 NYS 2d 423 (Appeal Dismissed 1951) 107 NYS 2d 565, is mentioned in the Motion to Dismiss.

Appellees say that Sec. 713 of the Vehicle Code and Sec. 105 of the ordinance "adequately and fully prevent any misuse of authority by the city in any way comparable to that attempted in the *Associated Transport* case."

The New York statute is the same as Sec. 713 of our Vehicle Code and the ordinance here involved "misuses" the authority conferred upon Redwood

City in precisely the same manner attempted in the *Associated Transport* case.

The New York statute involved in the *Transport* case, subdivision 1 of Sec. 90 of the Vehicle and Traffic law was practically identical with Sec. 713 of our Vehicle Code. The New York statute reads as follows:

> "The legislative body of a city, village, town of the first class or town of the second class having a population in excess of 25,000, or any municipal officer, board or body designated by it, is hereby authorized to designate highways respectively, in such city, or village, or such town outside of any village therein, in which vehicles shall proceed in one direction only, or from which heavy trucks shall be excluded. Such designation shall not be construed to prevent deliveries of merchandise or any property along such highways. Highways so designated shall be so marked at all intersections by conspicuous signs which shall be visible during the hours in which such designation is to be observed. No state highway shall be thus designated without the approval of the state traffic commission."

In that case the Syracuse ordinance limited certain westbound traffic to a designated street in Syracuse which street ran to the eastern boundary of the city of Solvay which city adjoins Syracuse on the west, and there connected with a Solvay Street over which heavy traffic was prohibited by a Solvay ordinance. *The Court held that the Syracuse ordinance was void because it prevented heavy traffic from proceeding beyond the western boundary of Syracuse.*

The effect of the Redwood City ordinance is the same as the Syracuse ordinance. In both cases the ordinances stopped westbound traffic at the city limits.

In several of the seven cases cited by appellant the courts either directly or by implication held that it was a duty of the city to furnish an alternate route *through the city.* In *Commonwealth v. Kennedy* (1937) 195 Atl. 770, the Court said:

> "Where other reasonably convenient routes *in the city* are available to the traffic thus excluded * * * the latter has no just cause of complaint."

The New York Court in *Associated Transport v. City of Syracuse,* supra, cited the opinion of the Attorney General of New York. The Attorney General said:

> "That under Sec. 90 of the Vehicle and Traffic law a municipality might lawfully designate highways from which heavy trucks should be excluded but in such cases the village had the duty to provide an alternate route which was adequate, safe and suitable, for otherwise it would be within the power of the village to bar such traffic entirely."

In the very nature of things an alternate route designated by a city ordinace must be a route within the city limits. A city has no control over roads outside of its limits.

It is evident that in the case now on appeal the ordinance does not provide for an alternate route, and the city in its attempt to sustain the ordinance is obliged to contend that the traffic excluded could

use a road which runs directly away from the city, over a high hill and through another city, the length of which road is approximately four times the length of the road through the city. Moreover, as shown by the evidence quoted at pages 17 to 20 of the Statement as to Jurisdiction the cost of hauling via the City of Woodside is approximately four times the cost of hauling through Redwood City.

In using the route via Woodside the burden and hazards of traffic are increased at least fourfold and are thrown upon county roads, state highways and the City of Woodside.

In *Shalko v. City of Sunnyvale* (1939) 14 Cal. (2d) 313 the Supreme Court of California held unreasonable and void a zoning ordinance which restricted certain land to residential uses although it adjoined a cannery. In holding the ordinance void as to such land the Supreme Court at page 215 said:

> "Unless the measure is clearly oppressive, it will be deemed to have been adopted within the purview of the police power. (Zahn v. Board of Public Works, 195 Cal. 497.) *But where the exercise of that power results in consequences which are oppressive and unreasonable courts do not hesitate to protect the rights of property owners against the unlawful interference with their property.* In other words, the governmental power is not unlimited, and a regulation of the use of property must rest upon a reasonable exercise of the police power. (Nectow v. Cambridge, 277 U.S. 183, 72 Lawyers Edition 842. Legislation may not under the guise of the police power impose restrictions that are unnecessary and unreason-

able upon the use of private property or the pursuit of useful activities. Washington v. Roberge, 278 U.S. 116.)"

Appellees ay that appellant claims a vested interest in every street in the city for heavy trucks. This statement is wholly untrue. Appellant makes no such claim but appellant does claim the right to operate his truck into and through the city from the point where the county road of Edgewood Road reaches the city limits. There are two city streets which terminate at this point and the city cannot close these streets to appellant without designating one or more streets as an alternate route.

Appellees cite *Wilbur v. City of Newton* (1938) 16 N.E. (2d) 86. In that case an ordinance prohibited heavy trucks on a portion of a single city street. All other streets in the city were open to such traffic. The ordinance made no attempt to interfere with traffic from outside the city. In certain cases (depending upon the destination of the truck) a longer haul was necessary but the streets over which trucks could operate were all within the city limits of Newton. It was shown that about 40 per cent of the traffic involved had to make a detour of about four miles, all within the city limits of Newton.

In *Whyte v. City of Sacramento* (1924) 65 Cal. App. 534 the Court at page 547 said:

"It is settled that the streets of a city belong to the people of the state and the use thereof is an inalienable right of every citizen of the

> state, subject to legislative control of such reasonable regulations as to traffic thereon or the manner of using them as the legislature of the state may deem wise or proper to adopt and impose. (Ex parte Daniels, 183 Cal. 636, 639)."

At page 13 of the Motion to Dismiss the following statement is made:

> "Appellant has several alternate routes available to him both within and without city limits."

This statement is utterly untrue. When appellant's truck reached the city limits at the point where the county road reaches the western city limits appellant had no alternate route through the city. The only way by which he could enter the city was by traveling west from the quarry, instead of east, on the county road of Edgewood Road to the county road of Canada Road; thence south on Canada Road to the City of Woodside and thence northerly on Woodside road, a state highway, to the state highway of El Camino Real and thence northwesterly on El Camino Real to the point where the city street of Edgewood Road reaches the state highway of El Camino Real, a total distance of about ten miles as against a distance of 2.7 miles if he traveled through Redwood City.

The only other available "alternate" route was by way of the county road of Edgewood Road to Canada Road and thence northerly on Canada Road to a state highway which runs from Canada Road through the City of San Mateo to El Camino Real, a state highway, a distance of approximately twenty miles from

the quarry to the point on El Camino Real which is reached by the city street of Edgewood Road.

Appellant cannot pass through the city of Belmont as the ordinance of that city forbids trucks of the weight he was operating to pass through Belmont. Likewise the ordinance of San Carlos forbids such trucks to pass through that city.

The burden of showing that appellant had an "alternate" route obviously devolved upon appellees. The ordinance provided for no alternate route and if a route *outside* of the city could legally be an alternate route it was incumbent upon appellees to prove the existence of such a route. The appellees did attempt to show that the route via the city of Woodside was an "alternate" route, and when appellant sought to show that because of the ordinances of Belmont and San Carlos there was no way in which appellant could pass through these cities appellees objected that such proof was irrelevant and immaterial and the objection was sustained by the trial Court, as shown by record on appeal herein. The ordinances were marked for identification and testimony was given that the roads had been posted as required by Section 713 of the Vehicle Code.

The courts take judicial notice of the boundaries of all cities and of all important roads and streets. San Carlos adjoins Redwood City on the north and Belmont adjoins San Carlos on the north. Belmont extends to the city limits of San Mateo. There is no unincorporated territory between Redwood City and

San Carlos or between San Carlos and Belmont or between Belmont and San Mateo.

REPLY TO CRITICISM IN MOTION TO DISMISS OF STATEMENT MADE AT PAGES 5 AND 6 OF THE STATEMENT AS TO JURISDICTION.

At pages 5 and 6 of the Statement as to Jurisdiction the map of Redwood City and the surrounding territory (Defendant's Exhibit No. 1) the City streets and the truck routes are described in detail. The map is a part of the record on this appeal. The map is cumbersome and consists of a map of Redwood City and some of the surrounding area. Another map is attached thereto showing the unincorporated territory west of Redwood City and the City of Woodside.

All of the roads which are a part of the alleged "alternate" route are shown on this map.

The map and the City streets and truck routes are very carefully described in the Statement as to Jurisdiction. In the Motion to Dismiss it is said that "because of the errors, inconsistencies and confusion arising from attempts in the Jurisdictional Statement to describe the streets, truck routes and other matters by compass direction * * * a map is set out in the Appendix to this brief". No attempt is made to show wherein the description of the streets and the truck routes set out in the Statement as to Jurisdiction at page 6 is incorrect or that the compass points therein described are erroneous. *The points of the compass are shown on defendant's Exhibit No. 1.*

The map which is attached to the Motion to Dismiss is entirely incomplete and has no place on this motion. It is not a copy of the map introduced in evidence and it shows only a small part of the unincorporated territory shown on defendant's Exhibit No. 1. The map *omits the points of the compass.* The map also omits the City of Woodside, all of Canada Road, most of Edgewood Road west of the quarry and does not show the location of the quarry.

It is also said in the Motion to Dismiss that "neither the map (Defendant's Exhibit No. 1) nor a copy thereof is available to appellees for inclusion as an Appendix to this Motion." Defendant's Exhibit No. 1 is an exhibit now on file with the clerk of the Court from which this appeal is taken *and is available to the appellees.* The original map is included in the Record on Appeal filed herein but a copy thereof was substituted therefor.

When the Appellate Department of the Superior Court authorized the transmission of the original exhibits to the clerk of the Supreme Court it ordered that copies thereof should be substituted therefor in the files of the Appellate Department of the Superior Court. This was done as is shown in the record on appeal herein.

At pages 5 and 6 of the Statement as to Jurisdiction the street system of Redwood City is described and it is there shown that Redwood City is bisected by El Camino Real, a state highway, which runs generally from north to south. *Not one street running from El Camino Real westerly is a truck route. Wood-*

side Road, a state highway, traffic on which cannot be affected by the ordinance, runs southerly from El Camino Real.

In the Motion to Dismiss it is said:

> "The general regulation contained in section 105(b) limits all heavy truck traffic in the city to one or more of twenty one designated truck routes which provide at least nine points of ingress and egress from the city limits."

The fact is as shown by the evidence in this case, that every one of these twenty-one truck routes are east of the state highway of El Camino Real, and not one of them is of any use to defendant and appellant.

Appellees fail to state that all of these twenty-one truck routes are of no use to appellant in operating his truck from the quarry to his point of destination unless he travels by Edgewood Road, west of the quarry, Canada Road and the State highway of Woodside Road, and through the City of Woodside.

These twenty-one truck routes are all on the east side of the state highway of El Camino Real. This is shown by the map attached to the Motion to Dismiss.

CONCLUSION.

It is respectfully submitted that the Motion to Dismiss should be denied.

Dated, April 8, 1958.

A. NOBLE MCCARTNEY,
Attorney for Appellant.

GEORGE H. ECKHARDT, JR.,
ALFRED J. HARWOOD,
Of Counsel.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 826

RAYMOND CAINE,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellees.

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

MOTION TO DISMISS.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 826

RAYMOND CAINE,
Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellees.

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

MOTION TO DISMISS.

Appellees, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal herein on file from the Appellate Department of the Superior Court of the State of California in and for the County of San Mateo, be dismissed on the ground that it does not present a substantial federal question.

OPINIONS BELOW.

No opinions below are reported.

STATUTES INVOLVED.

This appeal questions the constitutionality of Section 105, Ordinance 758 of the City of Redwood City, California. Section 105 as amended and in effect at the time of appellant's arrest is set forth in an appendix to this motion, marked Appendix "A".

Section 713, Vehicle Code, State of California, expressly granted the city authority to enact Section 105. Vehicle Code, Section 713, in effect at the time of appellant's arrest is set forth in an appendix to this motion, marked Appendix "B".

STATEMENT.

This litigation concerns the constitutionality of Section 105, Ordinance No. 758, of the City of Redwood City, which regulates the operation of trucks of over three-tons gross weight upon certain city streets.

Section 105 was regularly adopted by the city council pursuant to the express authority contained in Section 713 of the Vehicle Code of the State of California to become effective December 15, 1954.

On December 14, 1954, the lessees and operators of the Whipple Road Quarry, a rock quarry located in the unincorporated portion of the County of San Mateo, approximately 1.6 miles west of the westerly city

limits of Redwood City, commenced an action to enjoin the enforcement of the ordinance as void in so far as it regulated the use of Edgewood Road in the city limits by trucks emanating from the quarry. The action was predicated upon the theory that such regulation was contrary to the equal protection and due process of law provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 21 of Article I of the Constitution of the State of California. That litigation was finally terminated in favor of the constitutionality of the ordinance and the application thereof to trucks emanating from the quarry by judgment of the District Court of Appeal, State of California, on March 26, 1957. *McCammon v. City of Redwood City,* 149 Cal. App. 2d 421. Petition for rehearing was denied April 25, 1957, and the Supreme Court of the State of California denied a petition for hearing on May 22, 1957.

On June 11, 1957, the present litigation was commenced by the arrest of appellant while driving a truckload of rock having a gross weight in excess of thirteen tons on Edgewood Road in the city limits. The point of origin of the trip was the Whipple Road Quarry outside the city limits and the point of destination was the corner of Main and Bradford Streets in the city limits.

Precisely the same questions of equal protection and due process under the Federal Constitution which were raised in the *McCammon* case, *supra,* were again raised in the instant litigation and on substantially the same facts as were presented in the *McCammon* case.

The present appeal is from the final judgment of the Appellate Department of the Superior Court in and for the County of San Mateo, State of California, which affirmed the judgment of conviction entered against appellant by the Municipal Court of the Southern Judicial District of the County of San Mateo, State of California.

Knowledge of the street system of the City of Redwood City is essential to an understanding of the issues in this case. A map of Redwood City and a portion of the adjoining unincorporated territory showing the location of the Whipple Road Quarry, the destination points of appellant's load, and the point at which the city limits line of the City of Woodside crosses Canada Road, was introduced in evidence as Defendant's Exhibit No. 1. Neither this map nor a copy thereof is available to appellees for inclusion as an appendix to this motion. For the convenience of the Court and because of the errors, inconsistencies and confusion arising from attempts in the Jurisdictional Statement to describe the streets, truck routes, and other matters by compass direction, a map of the city indicating the truck routes designated by Section 105 of the ordinance is set forth in an appendix to this motion, marked Appendix "C".

Courts take judicial notice of all important roads and streets.

McKinley v. Dalton (1932), 128 C.A. 298 at page 303;

Varcoe v. Lee (1919), 180 Cal. 338 at page 347;

Kingston v. Hardt (1936), 18 C.A. (2d) 61, at page 63;

Times-Mirror Co. v. Superior Court (1935), 3 Cal. (2d) 309, 333.

Reference to the map and the ordinance will show that there are a total of twenty-one unlimited truck routes in the city.

The point of origin of appellant's trip was the Whipple Road Quarry which is situated on Edgewood Road in the unincorporated territory of the County of San Mateo, a distance of 1.6 miles southwesterly of the western city limits at the intersection of Cervantes Road and Edgewood Road. The destination point was Main and Bradford Streets within the city limits.

ARGUMENT.

Each and every question raised by appellant in this proceeding relative to the constitutionality of this ordinance and the application thereof to facts such as contained in this action has been presented at length, extensively argued, and fully, completely, and adequately determined by the courts of the State of California in accordance with applicable federal law. *McCammon v. City of Redwood City,* 149 Cal. App. 2d 421.

The principles governing this action have been clearly established by the federal courts in numerous previous decisions. The instant action presents no unique questions and contains no factual material

which would justify a departure from existing federal constitutional construction.

The questions presented by this appeal are extremely narrow. Any decision adverse to the constitutionality of the application of Section 105 to appellant under the facts in this case would be so narrow that it would not constitute a precedent of any value in determining the validity of this or similar legislation.

I.

APPELLANT HAS FAILED TO PRODUCE ANY EVIDENCE OVERCOMING THE PRESUMPTION IN FAVOR OF THE REASONABLENESS, VALIDITY, AND CONSTITUTIONALITY OF THE ORDINANCE.

The presumption in favor of the constitutionality of municipal ordinances is stated in *McQuillin, Municipal Corporations*, Vol. 5 (3rd Ed.) 481, as follows:

> "A municipal ordinance duly enacted under ample grant of power is presumably constitutional and binding. Indeed, in accordance with the rule that constitutionality of ordinances is favored, every presumption is in favor of the constitutionality of an ordinance, and when the constitutional validity of an ordinance or law arises, the limitation is uniformly applied. No ordinance or law will be declared unconstitutional unless clearly so and every reasonable intendment will be made to sustain it. The presumption of the constitutionality of an ordinance continues unless and until it is judicially determined to be unconstitutional. It is presumed that municipal authorities knew the

facts before adopting a police ordinance, where it is asserted that the ordinance contravenes the constitution."

The city's exercise of the police power in this instance was pursuant to the express grant contained in Section 713 of the Vehicle Code of the State of California.

The legislative determination to regulate the operation of motor vehicles upon certain streets, when within the scope of its power, is presumed to be supported by facts known to the legislature in the absence of evidence which precludes that possibility. That is to say, in reviewing the determination of the legislature, the court examines the record not to see whether the findings of the court below are supported by evidence but to ascertain on the whole record whether it is possible to say that the legislative choice is without any rational basis. *South Carolina etc. v. Barnwell Bros.*, 303 U.S. 177, 82 L. ed. 734.

If the validity of the legislative classification or the legislative determination of reasonableness be a debatable question, the legislative judgment must be allowed to control. *Zahn v. Board of Public Works*, 274 U.S. 325; *Euclid v. Ambler Realty Co.*, 272 U.S. 365.

II.

BOTH THE ORDINANCE AND THE APPLICATION THEREOF TO APPELLANT ARE REASONABLE AND CONSISTENT WITH DUE PROCESS OF LAW.

Appellant's complaint that this ordinance causes him inconvenience is admitted. Every exercise of police power causes inconvenience. A similar complaint can just as well be directed to any number of state and local regulations which restrict the trucking industry. For example: speed limits, arterial stop signs, one-way streets, no-parking regulations, no-left-turn regulations, limited access and limited egress to freeways, and many others. All of such regulations are valid, irrespective of extra inconvenience, expense, and even hardship. At the most, appellant has established that under the particular facts in this case it would have been more convenient for him to use certain restricted residential streets and that under such circumstances reasonable minds might differ as to which streets should have been designated truck routes.

What is reasonable is relevant and is dependent on the character and nature of the conditions to be met or overcome. Redwood City is a residential city. The entire area in the vicinity of Edgewood Road, Whipple Avenue, and Brewster Street is zoned exclusively for residential use and the streets therein are built to residential not commercial standards. Applicant claims a vested interest to use any and every street in the city for heavy trucking and challenges the city's right to place any limitation on his use of any route he deems desirable.

Fundamentally it must be recognized that the use of highways for the purpose of travel and transportation by the public is more than a mere privilege and neither the public generally, nor individuals, may be arbitrarily deprived of their right to such use. Notwithstanding such general principle, however, it is equally well established that usage of highways by the public is subject to reasonable regulation as to the manner of use for the general public welfare.

In upholding the validity of legislation restricting trucks exceeding one ton from certain streets in the City of Sacramento, California, the District Court of Appeal of the State of California in *Whyte v. City of Sacramento* (1924), 65 Cal. App. 534, anticipated the need for the action taken by the Redwood City Council in enacting the ordinance here in question, and that opinion, written thirty years ago, is an even more cogent argument now in support of such legislation than it was then. As stated in the *Whyte* case at page 548:

> "The conditions surrounding the use of the streets and highways of the state are vastly different now from what they were prior to the invention and the introduction of the automobile as a factor in the world's economy. It is so well known, as a matter of common and current knowledge, that the courts are forced to take cognizance of the fact that the automobile has become a common method for the transportation, locally, of freight and passengers and for business purposes generally, as well as for the purposes of pleasure. Likewise, it is known that in cities of large populations the streets thereof

often become, or would so become if the traffic thereon were left to the unrestrained liberty of those using such machines, so obstructed and congested as to render those thoroughfares practically useless for any other purpose than that to which they are put by the owners or drivers of such vehicles. In fact, even under proper regulations by the authorities, the use of those machines on the streets and highways of the state is a constant menace to the life and limbs of the people, as well as injurious to the streets and highways. If they were to be permitted to be used upon and over the public streets of the cities in the absence of any compulsory reasonable restraint whatsoever as to the manner of so using them it is readily to be seen that the result would be that the traffic thereon would be such as to impair, if not in some instances actually to prevent, the orderly and convenient transaction of the usual or ordinary business maintained and conducted in the business districts of such city. It is, therefore, proper that the legislative department of the government should take notice of that fact to the end that it may regulate such traffic so as to reduce to the lowest possible minimum the dangers and the inconveniences which naturally are the consequences thereof. Indeed, it is safe to conjecture that the time will come, and not in the far distant future, when even a more drastic regulation of automotive traffic may be required than now, and that the power of police may be drawn on by the state, of whose sovereignty it is an attribute, to accomplish such a result, cannot be doubted."

The controlling consideration prompting the enactment of this ordinance was the desire to avoid un-

reasonable traffic hazards over residential streets which were neither designed for heavy truck traffic nor constructed in a manner sufficient to maintain such traffic without extreme deterioration. In enacting the ordinance, the legislature of the City of Redwood City found as a fact that three-ton gross weight is the maximum load that may reasonably be allowed to pass over certain city streets restricted by the ordinance, taking into consideration the manner of past and present construction and probable future construction, maintenance and repair, conditions of traffic, character of neighborhood, number of adjacent schools, number and width of lanes of traffic, and none of these implied findings are contradicted by any evidence in the record.

As stated by the court in *McCammon v. City of Redwood City*, 149 Cal. App. 2d 421:

> "It should be emphasized that the ordinance does not prevent trucks from the quarry from delivering to any point in the city or elsewhere. However, appellants contend that, as a practical matter, the ordinance has this effect because the increased distance makes the hauling so expensive that it is not economically feasible.
>
> "The justification of the city for the enactment of the ordinance is that none of its streets connecting with Edgewood Road at the point where it enters the city is so constructed as to bear weight in excess of the limitation specified therein. Also, that all of said streets pass through residential areas and the use thereof by heavy trucks constitutes a traffic hazard, particularly as to children." (Page 425.)

> "In the instant case, as we have pointed out, appellants' trucks are not prevented from delivering to any point inside or outside of Redwood City. It is simply that the hauling distance to any point in the general area which is east, south or north of the quarry is thereby increased and results in increased expense. The reasonableness of the ordinance is based upon two factors, light construction of the streets so restricted and the traffic hazard through the residential district involved. In keeping with the principles stated in the Whyte case, *supra*, we hold that the ordinance is a valid exercise of the police power and the statutory authority conferred by section 713 of the Vehicle Code." (Page 427.)

The fact that heavy trucks previously used the streets which have been restricted by this ordinance does not constitute a limitation on the city's power to establish these regulations. A vested interest cannot be asserted against the police power because of conditions once obtaining. *Chicago & Alton R. Co. v. Trenbarger,* 238 U.S. 67, 78.

Legislation of the type here involved has repeatedly and expressly been upheld as reasonable and consistent with due process by the Supreme Court of the United States.

Morris v. Duby, 274 U.S. 135, 71 L. ed. 966, 47 S. Ct. 548;

Sproles v. Binford, 286 U.S. 374, 76 L. ed. 1167, 52 S. Ct. 581;

South Carolina etc. v. Barnwell Bros., 303 U.S. 177, 82 L. ed. 734, 58 S. Ct. 510.

In *Morris v. Duby, supra,* the court at page 144, stated:

> "With the increase in number and size of the vehicles used on a highway, both the danger and wear and tear grow. To exclude unnecessary vehicles, particularly the ones commonly used by carriers for hire, promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by the Congress which deals specifically with the subject . . . The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that a regulation forbidding it is either unreasonable or discriminatory."

The following cases have also expressly upheld the validity of legislation excluding vehicles from certain streets:

Ferguson Coal Co. v. Thompson, 343 Ill. 20, 174 N.E. 896;

Wilbur v. Newton, 16 N.E. (2d) 86;

Smallwood v. District of Columbia, 57 App. D.C. 58, 17 F. (2d) 210;

Fifth Avenue Coach Co. v. New York, 221 U.S. 467, 55 L. ed. 815, 31 S. Ct. 709.

Appellant's argument as to reasonableness based upon the lack of an alternate route is wholly without foundation. Appellant has several alternate routes available to him both within and without the city limits.

The situation discussed in *Associated Transport v. City of Syracuse*, 196 Misc. 1091, 93 N.Y.S. (2d) 423 (appeal dismissed 1951) 107 N.Y.S. (2d) 565, is in no way comparable to the situation in the instant litigation. Section 713 of the Vehicle Code of the State of California and Section 105 of the ordinance adequately and fully prevent any misuse of authority by the city in any way comparable to that attempted in the *Associated Transport* case. As a reference to the map will show, Redwood City is bisected by three unrestricted state highways. Moreover the ordinance itself provides for twenty-one unlimited truck routes within the city limits.

III.

BOTH THE ORDINANCE AND THE APPLICATION THEREOF TO APPELLANT ARE REASONABLE AND CONSISTENT WITH THE PRINCIPLE OF EQUAL PROTECTION OF THE LAW.

The evils sought to be avoided by the legislature in enacting the ordinance in question consist of the increased traffic hazard to persons and property, the damage to street surfaces, the increased risk of highway injury to children and others, and the interference with normal and necessary traffic flow which inevitably arise as a result of *nonessential use* of the restricted streets by extremely large and heavy trucks.

The classifications established in the ordinance to accomplish this purpose have been found by the legislature to be reasonably related to that end. No evidence is included in the record to contradict these findings.

The general regulation contained in Section 105(B) limits all heavy truck traffic in the city to one or more of twenty-one designated truck routes which provide at least nine points of ingress and egress from the city limits.

The exceptions contained in subdivisions (C) and (D) are designed to permit *limited use* of prohibited streets ***where such use is essential*** to the economic life and general public welfare of the community and the surrounding area.

Without such exceptions the basic regulations would fail as arbitrary. The exceptions, read together, are admirably designed and applied to accomplish the purpose of the legislation by eliminating ***nonessential*** truck traffic from lightly constructed narrow residential streets and routing as much of such traffic as is reasonably possible over wider, safer, and more adequately designed and constructed streets.

The exceptions refer only to local hauls confined to small areas which, being consistently short, greatly reduce the danger of traffic congestion and highway injury incidental to heavy truck transportation. In addition, as stated above, such exceptions are absolutely essential to the continuance of the economic life of the area and are most consistent with the general public interest and welfare.

As stated in *Sproles v. Binford*, 286 U.S. 374, at page 392:

> "We think that the exception, in the light of its context and of its apparent purpose, instead of

being arbitrary relieves the limitation of an application which otherwise might itself be considered unreasonable with respect to the exceptional movements described."

Richter Concrete Corporation v. City of Reading (1956), 136 N.E. (2d) 422, relied upon by appellant, is inapplicable to the present litigation from the standpoint of both fact and law.

The Reading ordinance permitted heavy trucking on only *one street in the entire community*. The Redwood City ordinance contains twenty-one unlimited truck routes. Contrary to the situation in the Reading case, Redwood City is traversed and bisected by three major State highways providing unlimited routes through the city.

In the present action, appellant was hauling from a point outside to a point inside the city limits. He was not engaged in hauling through the city. If we are to accept the analysis of the *Reading* case, appellant would be within the favored class and not within the class of through traffic against which the Reading ordinance was said to discriminate. Under such circumstances, the appellant could not even raise the question of equal protection.

Section 713 of the Vehicle Code assures that no embargo such as attempted in *Associated Transport v. City of Syracuse, supra*, and *Richter Concrete Corporation v. City of Reading, supra*, can possibly occur in the City of Redwood City, traversed and bisected as it is by three major highways.

An ordinance restricting the use of a street by vehicles carrying a load weighing in excess of two tons is not unconstitutional or discriminatory against certain concerns or individuals because they suffer more than others due to a greater use of the street. The injury sustained by those engaged in the business of marketing and transporting sand and gravel by an ordinance restricting use of certain streets to vehicles below a two-ton carrying capacity is insufficient to support a claim of discrimination though such ordinance caused 40% of the concern's trucking to make a four-mile longer haul and suffer other disadvantages with respect to loading, unloading, and waiting time. *Wilbur v. City of Newton,* 16 N.E. (2d) 86. See also cases collected in 21 *ALR* 573.

The ordinance complained of here applies to all persons in the City of Redwood City engaged in using city streets with trucks of a gross weight in excess of three tons. The ordinance does not discriminate against any particular person. All of the class engaged in the described activity within the limits of the city are subject to the terms of the ordinance. In other words, the ordinance imposes no greater burdens upon one of the class mentioned than are laid upon others of the same class or engaged in the same activity under the same conditions. It is settled that when a regulatory ordinance applies to all engaged in one kind of business there is no discrimination. *Powell v. Commonwealth,* 127 U.S. 678, 32 L. ed. 253, 8 S. Ct. 992. As stated in the *Whyte* case, *supra,* at page 550:

> "The classification made by the ordinance, to wit, upon the basis of the weight of the vehicle, the load it carries and the injurious effect thereof upon the streets, involves a real and substantial distinction, 'having a reasonable and just relation to the things in respect to which such classification is imposed.' (*Barbier v. Connolly*, 113 U.S. 27, 31 (28 L. ed. 923, 5 Sup. Ct. Rep. 357, see also, Rose's U.S. Notes).)"

Nothing in the ordinance complained of herein prevents trucks emanating from the Whipple Road Quarry or from any other place inside or outside of the city from delivering to any point inside or outside of the city. Nothing in the ordinance prevents appellant from using Edgewood Road or any other street in the city whether he is hauling from a point outside of the city or inside of the city if it is necessary that Edgewood Road be used to accomplish either pickup or delivery of a load. The ordinance prohibits appellant and every other person regardless of where his place of business is located and regardless of where the point of delivery is located from entering the city with a thirteen-ton truck at any point other than a truck route designated by the ordinance or a state highway. It is clear that appellant is not being treated differently than any other person.

CONCLUSION.

For the reasons set forth above, it is respectfully submitted that the appellant presents no substantial question for the decision of this court, and that the appeal on file herein be dismissed.

Dated, March 24, 1958.

Respectfully submitted,

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Of Counsel.

(Appendices "A", "B" and "C" Follow.)

Appendix "A"

Section 105. *Truck Routes.* (A) The following streets are hereby declared to be truck traffic routes for the movement of vehicles exceeding a minimum gross weight of three (3) tons hereinafter called "trucks", and the City Manager is hereby authorized and directed to designate such streets by appropriate signs as "Truck Route". Said streets are specifically designated as follows:

1. All of El Camino Real within the corporate limits of Redwood City.

2. All of Bayshore Highway within the corporate limits of Redwood City.

3. All of Main Street within the corporate limits of Redwood City.

4. All of Stafford Street within the corporate limits of Redwood City.

5. All of Industrial Way within the corporate limits of Redwood City.

6. All of Woodside Road within the corporate limits of Redwood City.

7. All of Spruce Street within the corporate limits of Redwood City.

8. All of Harbor Boulevard within the corporate limits of Redwood City.

9. All of Jefferson Avenue between El Camino Real and Pennsylvania Avenue.

10. All of Maple Street between El Camino Real and Main Street.

11. All of Chestnut Street between Main Street and Bayshore Highway.

12. All of Middlefield Road southerly of Main Street.

13. All of Spring Street between Chestnut Street and Douglas Avenue.

14. All of Bay Road from Chestnut Street to Second Avenue.

15. All of Broadway from Chestnut Street to Fifth Avenue.

16. All of Charter Street from Spring Street to Bayshore Highway.

17. All of Fifth Avenue between Broadway and Bayshore Highway.

18. All of Second Avenue from Bay Road to Broadway.

19. All of Douglas Avenue between Bay Road and Broadway and all of Douglas Avenue northerly from Broadway.

20. All of Pennsylvania Avenue between Jefferson Avenue and Maple Street.

21. All of Whipple Avenue between El Camino Real and Bayshore Highway.

(B) No person, firm or corporation shall operate any truck having a gross weight in excess of three (3) tons on any street in the City of Redwood City except

on those streets specified in Section 105(A) hereof and subject to the exceptions hereinafter provided. For the purpose of this ordinance the word "Truck" shall include the words "truck and trailer" or any combination thereof as defined in Section 152 hereof and any commercial vehicle as defined in the Vehicle Code of the State of California.

(C) *Truck Traffic in the City; Outside Origin:*

1. *Outside Destination:* All trucks entering the City for a destination point outside the City shall operate only over a truck route as hereinbefore established.

2. *One Inside Destination Point:* All trucks entering the City for a destination point in the City shall enter the City only on an established truck route and shall proceed only over an established truck route and shall deviate only at the intersection with the street nearest to the destination point. Upon leaving the destination point the deviating truck shall return to the nearest truck route by the shortest route.

3. *Multiple Inside Destination Points*: All trucks entering the City for multiple destination points shall enter the City only on established truck routes, shall proceed only over established truck routes and shall deviate only at the intersection with the street nearest to the first destination point. Upon leaving the first destination point a deviating truck shall proceed to all other destination points by the shortest route. Upon leaving the last destination point the deviating truck shall return to the nearest truck route by the shortest route.

(D) *Truck Traffic in the City; Inside Origin:*

1. *Outside Destination Point*: All trucks on a trip originating in the City and traveling in the City for a destination point outside the City shall proceed by the shortest route to the nearest truck route as herein established.

2. *Inside Destination Points*: All trucks on a trip originating in the City and traveling in the City for destination points in the City shall proceed to such destination points by the shortest route.

(E) Any police officer shall have the authority to require any person driving or in control of any truck on any public street or highway in the City of Redwood City to proceed to any public or private scale available for the purpose of weighing and determining whether this section has been complied with.

(F) Nothing in this section shall be construed as applying to any truck coming from an unrestricted street having ingress and egress by direct route to and from streets on which truck traffic is restricted as herein provided when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on streets other than truck routes or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon a street other than a truck route for which a building permit has previously been obtained, or to any vehicle owned by a public utility while necessarily in use

in the construction, installation or repair of any public utility, or to any vehicle which is subject to the provisions of Section 50 and ¼ of the Public Utilities Act, or to any vehicle owned or operated by the City of Redwood City while engaged in the repair, maintenance or construction of streets, street improvements or street utilities.

Appendix "B"

§ 713. *Reduction of weight limits by cities*

WHEN CITIES MAY REDUCE WEIGHT LIMITS. (a) *Powers of cities.* Any incorporated city, or city and county may by ordinance prohibit the use of a street to be described in said ordinance by any commercial vehicle or by any vehicle exceeding a maximum gross weight limit to be specified in the ordinance, except with respect to any vehicle which is subject to the provisions of Section 50¼ of the Public Utilities Act.

(b) *Signs.* No such ordinance shall be effective until appropriate signs are erected indicating either those streets affected by such ordinance or those streets not so affected as such local authority may determine will best serve to give notice of such ordinance.

(c) *Weight limitations less than code provisions.* Except as permitted in this section, no city, or city and county shall have any authority to impose limitations upon the weight of vehicles and loads less than those set forth in this code.

(d) *Highways not under exclusive jurisdiction of city.* No ordinance proposed to be enacted under this section is effective with respect to any highway which is not under the exclusive jurisdiction of the local authority enacting such ordinance, or, in the case of any state highway, until such proposed ordinance has been submitted by the governing body of such local authority to and approved in writing by the Depart-

ment of Public Works. In submitting such a proposed ordinance to the department for approval, the governing body of such local authority shall designate therein, all alternate route or routes for the use of such vehicles which shall remain unrestricted by any local regulation as to weight limits or types of vehicles so long as the ordinance proposed shall remain in effect. The approval of such proposed ordinance by the Department of Public Works shall constitute an approval by the department of such alternate route or routes so designated.

(e) *Commercial vehicles.* No ordinance adopted pursuant to this section shall prohibit any commercial vehicles coming from an unrestricted street having ingress and egress by direct route to and from such restricted streets when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on such restricted streets or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon such restricted street for which a building permit has previously been obtained therefor.

(f) *Public utility vehicles.* No ordinance adopted pursuant to this section shall apply to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility. (Stats. 1935, c. 27, p. 233, § 713, as amended Stats. 1935, c. 592, p. 1679; Stats. 1945, c. 771, p. 1456, § 1; Stats. 1951, c. 969, p. 2590, § 1.)

Note

Appendix "C" at this point is on Card 3.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 826

RAYMOND CAINE,
Appellant,
vs.
THE PEOPLE OF THE STATE OF CALIFORNIA,
Appellees.

Appeal—Criminal

APPELLANT'S PETITION FOR REHEARING OF DECISION.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

No. 826

RAYMOND CAINE, *Appellant,* vs. THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellees.*	Appeal—Criminal

APPELLANT'S PETITION FOR REHEARING OF DECISION.

The appellant, Raymond Caine, hereby petitions the Supreme Court for a rehearing of its decision rendered on April 28, 1958, granting appellees' motion for dismissal of appeal.

The decision was based on the ground that there is no substantial federal question involved on this appeal.

We most respectfully urge that the Court has grievously erred, *and that there are unquestionably two most substantial federal questions directly involved, and that if the decision is permitted to stand, it will result in a grave miscarriage of justice.*

The two federal questions involved here are:

1. Does the Redwood City ordinance deny to appellant the equal protection of the laws by for-

bidding him to enter the city limits of Redwood City at the point where the county road of Edgewood Road reaches the Western city limits of Redwood City and to use any city street connecting with that road, where it permits other trucks of the same weight to use such city streets to or from such point on such Western city limits? Appellant was hauling from a point on the county road 1.6 miles west of the city limits.

2. Does the ordinance deprive appellant of his liberty and property without due process of law when it closes all streets connecting with the county road of Edgewood Road to appellant's trucks without designating an alternate route through the city, and is a so-called "alternate" route, most of which is outside of the city, a reasonable route where such route runs over a high and steep hill outside of the city and where the route runs through another city, viz., Woodside, and where the cost of transportation is 3 times as great as the cost via the route through the city? The distance via the route through the city is 2.7 miles, whereas the distance via Woodside is 10.45 miles.

In this case the plaintiff in error, a truck operator, hauling from a point outside of the city, is by an ordinance of Redwood City forbidden to enter or leave the city at the point where the county road of Edgewood Road reaches the city limits; but trucks of other persons which do not enter or leave the city at that point are permitted by the ordinance to use

the city streets of Redwood City right up to such point and to haul from such point in Redwood City to any other point in the city or elsewhere.

With all deference to this Court, appellant most respectfully urges that *the Court must have misunderstood the facts presented on this appeal. Never before were substantial federal questions, arising under the Fourteenth Amendment, more clearly and definitely presented to the Court for its decision.*

The right of appeal in this case is not dependent upon the *discretion* of the Supreme Court. It is only in cases where the appeal raises no substantial federal question or where it is obviously frivolous that this Court in its discretion may grant a motion to dismiss. Section 1287, 28 U.S. Code provides that final judgments or decisions rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by appeal where there is drawn in question the validity of a statute on the ground of its being repugnant to the Constitution and the decision is in favor of the validity of the statute.

If the Supreme Court had, in previous decisions, held under facts such as are here presented, that the appellant was not entitled to relief, such as was the case in *King v. Zucht,* 260 U.S. 174, referred to in Rule 15 of this Court, the decision dismissing the appeal would be correct, *but obviously the case here does not come under the doctrine of King v. Zucht, supra.*

In the appellees' brief, filed on the motion to dismiss, the appellees say "any decision adverse to the

constitutionality of the application of Section 105 (of the ordinance) to appellant under the facts in this case would be so narrow that it would not constitute a precedent of any value in determining the validity of this or similar litigation."

This statement is obviously wholly irrelevant. All that appellant is required to show here is that he is denied the equal protection of the laws or that he is deprived of his liberty or property without due process of law. This he has done.

DENIAL OF EQUAL PROTECTION OF THE LAWS.

It cannot be questioned that an ordinance which forbids certain trucks of a given weight to operate on certain city streets when at the same time the ordinance permits other trucks of the same weight to operate on the same streets, denies to the operators of the trucks first mentioned the equal protection of the laws.

With reference to the equal protection of the laws: This Court in *T. Binford v. McLeaish* (1932), 284 U.S. 598 and the Federal District Court in *McLeaish v. Binford* (1931), 52 Fed. (2d) 151 (a three-judge Federal Court) both held on facts not to be distinguished from the facts in the instant case, that the Texas statute there involved violated the equal protection of the laws provision of the Fourteenth Amendment.

The case in 284 U.S. 598 was an appeal from the decision in *McLeaish v. Binford*, 52 Fed. (2d) 151.

supra, and the decision of the District Court was affirmed.

There is no difference in principle between the Texas statute and the Redwood City ordinance here involved. In the Texas case the discrimination was based upon the difference between loads of compressed cotton and loads of other freight. But whether the vehicle was loaded with compressed cotton or other freight, its effect upon the highways was the same. *So in the instant case a truck entering the city from a county road has the same effect upon the streets of the city as any other truck of the same weight.*

So in the case of *Richter Concrete Co. v. City of Reading* (1956), 136 N.E. (2d) 422, the Supreme Court of Ohio, on facts entirely similar to the facts presented on this appeal, held that an ordinance which prohibited through traffic through the city but did not forbid trucks to enter the city if they intended to deliver their loads to points within the city, was discriminatory and rendered the ordinance void.

It appears therefore that the Supreme Court, the three-judge Federal Court and the Ohio Supreme Court have all held that statutes and ordinances similar to the ordinance here involved are violative of the equal protection of the laws provision of the Fourteenth Amendment.

Nevertheless, when such rights are asserted by the appellant herein, the Supreme Court has ruled that no substantial federal question is involved.

Appellant is by the ordinance denied the right to enter the city limits at the point where the county

road of Edgewood Road reaches the city limits, or to use any city streets connecting with the county road of Edgewood Road; but trucks of other persons which do not enter the city at that point are permitted by the ordinance to use the city streets connecting with the county road of Edgewood Road. Appellant when traveling from Redwood City to the quarry, which is 1.7 miles west of Redwood City, is denied the right to use any city street to reach the county road of Edgewood Road, but other trucks are *permitted to use such city streets if they do not leave the city at the point where the county road of Edgewood Road reaches the Western city limits.* All such trucks have the same effect upon the streets of Redwood City and upon the inhabitants of the city, *and obviously there is no valid basis for such discrimination.* (Subdivisions 1 and 2 of Division "C" of Section 105 of the ordinance and Subdivisions 1 and 2 of Division "D" of Section 105, set out at page iii of the Appendix to the Jurisdictional Statement.)

In appellant's brief on the Motion to Dismiss it is said that the exceptions contained in Subdivisions (C) and (D) of Section 105 of the ordinance "are designed to permit limited use of prohibited streets where such use is essential to the economic life and general public welfare of the community and the surrounding area."

Obviously appellant was making but a limited use of the city street of Edgewood Road. He was hauling a load of rock to a construction job at a point in the city limits just as any other truck operator would who hauled from a point in the city to a construction job

in the city. This was pointed out at page 10 of appellant's brief in opposition to the motion to dismiss.

It is also obvious that the ordinance discriminates against persons hauling into the city from the outside, and that the place from where a truck starts its trip cannot be made the basis of discrimination.

Unquestionably that is the situation presented on this appeal. That being so, we most respectfully submit, it necessarily follows that this case presents most substantial federal questions. *As to the equal protection of the laws the invalidity of the ordinance appears upon the face of the ordinance.*

DENIAL OF DUE PROCESS OF LAW.

Appellant earnestly maintains that the ordinance, both on its face and because of the undisputed facts adduced in evidence, shows that, as applied to appellant, it is arbitrary, unreasonable and capricious and deprives him of his liberty and property without due process of law. *The ordinance closes the Western entrance to the city* and makes no provision for an alternate route. In many cases in the United States, it has been held or assumed that in such a case the ordinance must provide for an alternate route *through the city* or otherwise it is unconstitutional. These cases are cited at pages 16 and 17 of the Statement as to Jurisdiction.

It was contended that appellant had an "alternate" route outside of the city. This route required the appellant *to travel west instead of east from the quarry and to traverse many miles of county roads*

and state highways outside of the city and to pass through another city, viz., Woodside.

The facts show that the route which appellant is, by the ordinance, required to travel *is most capricious, arbitrary, unreasonable and confiscatory.*

The New York Court in *Associated Transport v. City of Syracuse,* 93 N.Y.S. 2d 423 (appeal dismissed 1951, 107 N.Y.S. 2d 565) quoted from the opinion of the Attorney General of New York, as follows:

> "That under Section 90 of the Vehicle and Traffic Law a municipality might lawfully designate highways from which such heavy trucks should be excluded, but in such cases a village *has the duty to provide an alternate route which was adequate, safe and suitable,* or otherwise it would be within the power of the village to bar such traffic entirely."

In *Commonwealth v. Kennedy* (1937), 195 Atl. 770, the Court said:

> "Where other *reasonably convenient routes in the city* are available to the traffic thus excluded in the interest of the public safety and welfare, the latter has no just cause for complaint."

The other undisputed facts showing that the ordinance is arbitrary, capricious and unreasonable, are as follows:

> (1) The ordinance compels appellant to travel directly away from the city over a hill outside of the city, the elevation of which is 569 feet above sea level. The road via Redwood City is all down hill. The maximum grade of the road over the hill is 7.15 per cent. After crossing the hill the

road enters another county road, viz., Canada Road. Travelling south on Canada Road that road enters the City of Woodside and proceeds through that city on Canada Road (then a city street of Woodside) to the state highway of Woodside Road in the City of Woodside. It then follows the state highway of Woodside Road to the city limits of the City of Redwood City. The distance from the quarry to the intersection of the city street of Edgewood Road and the state highway of El Camino Real in Redwood City is 10.45 miles, whereas the distance to that point by the route through Redwood City is 2.7 miles.

(2) The cost of transporting rock via the City of Woodside is approximately *three times as great as the cost of transportation via the direct route through Redwood City.*

(3) The hazards of traffic are more than four times as great via the City of Woodside. The hazards are greatly increased by the steep curved road over a high hill, and by the fact that over 5 miles of the route are on state highways. *The hazards are also greatly increased by the fact that the trucks are over three times as long on the road.*

(4) Not any of the 10.45 miles of road via Woodside is maintained by the City of Redwood City. A portion is maintained by the County of San Mateo, a portion by the City of Woodside, and a portion by the State of California.

(5) In order to save the wear and tear on 1.10 miles of a city street and the hazards involved in

travelling that distance on such street, the ordinance throws all of those burdens upon the County of San Mateo, the City of Woodside and the State of California. *Those additional burdens are also thrown on appellant.*

In *Nectow v. City of Cambridge*, 277 U.S. 183, the Supreme Court reversed a decision of the Supreme Judicial Court of Massachusetts which dismissed a bill to compel the issuance of a building permit. The matter involved was a zoning ordinance of the City of Cambridge which by its terms prevented the granting of a permit. The Supreme Court reversed the decision of the Massachusetts Court on the ground that the ordinance as applied to the plaintiff in error deprived him of his property without due process of law in contravention of the Fourteenth Amendment. The land of plaintiff was originally zoned for industrial uses, but the ordinance in question zoned it for residential purposes. The plaintiff maintained that the land had little value for such purposes. *In the instant case the ordinance, by trebling the cost of transportation, very greatly reduced the value of rock at the quarry or made it unsalable, thereby depriving appellant of his livelihood which depended upon his job of hauling such rock.*

Is it not obvious that the federal questions involved in the instant case are just as substantial as the federal questions involved in Nectow v. Cambridge, supra?

In *Skalko v. City of Sunnyvale* (1939), 14 Cal. (2d) 213, the Supreme Court of California, upon the authority of *Nectow v. City of Cambridge, supra*, held

an ordinance of the City of Sunnyvale void as to the plaintiff. The ordinance restricted plaintiff's land to residential uses although it adjoined a cannery. The Court, at page 215, said:

> "But where the exercise of that power (the police power) results in consequences which are oppressive and unreasonable, the courts do not hesitate to protect the rights of property owners against the unlawful interference with their property."

Can it be doubted that the ordinance here in question is much more unreasonable, capricious, arbitrary and oppressive than the ordinances which were under consideration in the two cases last cited?

It is most respectfully submitted that this Court, in granting the motion to dismiss, has entirely disregarded the undisputed facts appearing in the record, and that on the clearest principles of elementary justice, a rehearing should be granted and the motion to dismiss denied.

Dated, May 15, 1958.

Respectfully submitted,

A. NOBLE MCCARTNEY,
Attorney for Appellant and Petitioner.

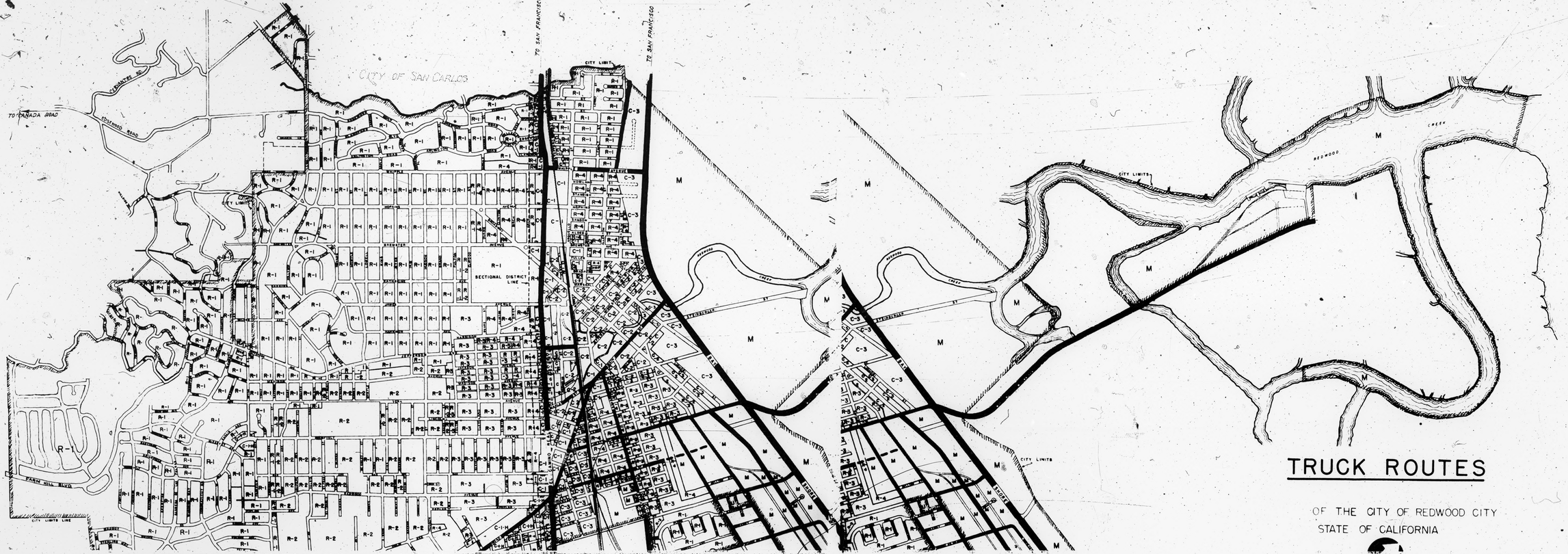
GEORGE H. ECKHARDT, JR.,
ALFRED J. HARWOOD,
Of Counsel.

Certificate of Counsel

The undersigned counsel for appellant hereby certifies that the foregoing petition is presented in good faith and not for delay.

Dated, May 15, 1958.

A. Noble McCartney,
Attorney for Appellant and Petitioner.


CITY OF SAN CARLOS
TO CANADA ROAD
WOODSIDE RD.
REDWOOD ROAD
CITY LIMITS
TO SAN FRANCISCO
R-1 SECTIONAL DISTRICT LINE
FARM HILL BLVD.
CITY LIMIT LINE
REDWOOD CREEK
CITY LIMITS
TRUCK ROUTES
OF THE CITY OF REDWOOD CITY
STATE OF CALIFORNIA
TOWN OF ATHERTON
TO SAN JOSE
CITY OF MENLO PARK
STATE OF CALIFORNIA
SCALE
HARR, WISE & ASSOCIATES — PLANNING CONSULTANTS
LEGEND
R-1 SINGLE FAMILY RESIDENTIAL DISTRICTS
R-2 TWO FAMILY RESIDENTIAL DISTRICTS
R-3 MULTIPLE RESIDENCE DISTRICTS
R-4 MULTIPLE RESIDENTIAL DISTRICTS
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